

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD E. SMITH,)
v. Plaintiff,)
) 2:08-cv-365
JONES, GREGG, CREEHAN & GERACE, LLP.,)
RICHARD B. SANDOW, Esq., DAVID M.)
HUNTLEY, Esq., BYRON W. KING, Esq., JOHN)
P. CORCORAN, JR., Esq., RAYMOND M.)
ROBERTS, Esq., MICHAEL A. CARR, Esq.,)
ANTHONY W. SAVEIKIS, Esq., STOCKEY &)
KELLY, WILLIAM E. STOCKEY, Esq., THE)
DOLAN GROUP, LLC., JOHN S. DOLAN, CPA,)
DAGNON & DENNEHY, JOHN M. DAGNON,)
CPA, PNC FINANCIAL SERVICES GROUP,)
JOEL GOLD, Esq., LAZARUS M. PALNICK,)
Esq., CHARLES DATZ, CLYDE H. SLEASE, Esq.,)
THOMAS E. CUNNINGHAM, BERNADETTE J.)
CUNNINGHAM, CHRISTIN S. MILLER, DAVID)
K. MILLER, RICHARD J. BARKO, and STACIE)
L. BARKO,)
 Defendants.)

MEMORANDUM ORDER

Pending now before the Court are PLAINTIFF'S MOTION TO EXTEND TIME TO RESPOND TO DEFENDANT'S MOTION TO DISMISS FILED ELECTRONICALLY ON MAY 30, 2008 WITH RESPONSE BY PLAINTIFF DUE BY JUNE 18, 2008 (Document No. 40) and PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT SEEKING TO MERELY RESTATE COUNT XI AND COUNT XII WITH A MORE DEFINITIVE STATEMENT WITH EXHIBITS (Document No. 41) and numerous Motions to Dismiss and/or Motions for a More Definite Statement filed by various Defendants (Document Nos. 32, 42, 49, 56, 57, 65, 67).

Plaintiff Donald E. Smith is pro se. The Court previously granted Plaintiff's motion to

proceed in forma pauperis under 28 U.S.C. § 1915, but the Court denied Plaintiff's request to appoint counsel. Many of the named Defendants have not yet been served. The Complaint filed by Smith contains twelve counts, only two of which might support the exercise of subject-matter jurisdiction by this Court (Count XI - RICO, and Count XII - Section 1985). The Court noted that these counts of the Complaint were flawed in numerous respects, but undertook only a preliminary analysis. Several defendants have filed responsive motions, but no defendant has filed an answer to the complaint.

Plaintiff now seeks to amend the complaint. Pursuant to Fed. R. Civ. P. 15(a)(1)(A), a party is entitled to amend his pleading once as a matter of course before he is served with a responsive pleading. Accordingly, Smith must be permitted to amend the complaint. However, Smith will not be permitted to merely restate Counts XI and XII. The amended complaint will supersede the existing complaint in all respects. Therefore, if Smith continues to seek to assert the claims set forth in Counts I-X, those claims must be re-stated in the amended complaint. Defendants will be afforded a full and fair opportunity to respond to the amended complaint.

The Court will clarify the process to be followed for amending the complaint, for the benefit of all the parties. Plaintiff's Motion to Amend states that "Plaintiff believes and avers that he will soon have counsel enter an appearance on his behalf." The Court agrees that participation by Plaintiff's counsel would be of substantial benefit in this factually and legally complex case. Plaintiff's counsel would be able to evaluate the strengths and weaknesses of the potential causes of action, identify the appropriate defendants, and enable Plaintiff to select the most appropriate forum for his claims. Ideally, counsel for Plaintiff would enter an immediate appearance and draft the amended complaint.

Accordingly, the following schedule shall be followed: Plaintiff shall have until June 25, 2008 to obtain counsel to enter an appearance on his behalf. If an attorney does not enter an appearance on Plaintiff's behalf, the amended complaint must be filed on or before July 2, 2008. If counsel for Plaintiff does enter an appearance on or before June 25, 2008, the amended complaint shall be filed on or before July 10, 2008. The additional time is intended to provide counsel with an opportunity to become familiar with the facts of the case. Defendants who have been served shall respond to the amended complaint, by answer or appropriate motion, within twenty days.

In accordance with the foregoing, PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT SEEKING TO MERELY RESTATE COUNT XI AND COUNT XII WITH A MORE DEFINITIVE STATEMENT WITH EXHIBITS (Document No. 41) **IS GRANTED IN PART AND DENIED IN PART**; all pending Motions to Dismiss and/or Motions for a More Definite Statement (Document Nos. 32, 42, 49, 56, 57, 65, 67) are **DENIED WITHOUT PREJUDICE AS MOOT**; and PLAINTIFF'S MOTION TO EXTEND TIME TO RESPOND TO DEFENDANT'S MOTION TO DISMISS FILED ELECTRONICALLY ON MAY 30, 2008 WITH RESPONSE BY PLAINTIFF DUE BY JUNE 18, 2008 (Document No. 40) is **DENIED AS MOOT**.

SO ORDERED this 9th day of June, 2008.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

cc: DONALD E. SMITH
1308 Main Street #4
Burgettstown, PA 15021
(412) 722-3783
(by US Mail)

All Counsel of Record
(by CM/ECF)